

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

UNITED STATES OF AMERICA, : CASE NO.: 3:10CV446

Plaintiff, : JUDGE THOMAS M. ROSE

v. :

(1) REAL PROPERTY KNOWN AS :  
6614 LINZIE DRIVE, FRANKLIN,  
OHIO 45005, et al. :

Defendants. :

**AGREED ORDER DISMISSING COMPLAINT AGAINST ALL DEFENDANTS**

It is hereby stipulated and AGREED by and between Plaintiff, United States of America, and Claimant EARL D. CLARK, Potential Claimant RACHEL CLARK and Claimant, WESBANCO BANK, INC., successor to Towne Bank, (hereinafter "WESBANCO") and the Court hereby finds that:

1. In this civil forfeiture action, filed on December 1, 2010, the United States sought the forfeiture of the following Defendants:
  - (a) Real Property commonly known as 6614 Linzie Drive, Franklin, Ohio 45005;
  - (b) Real Property commonly known as 1860 South University Boulevard, Middletown, Ohio;
  - (c) Real Property commonly known as 6275 Germantown Road, Middletown, Ohio, 45042; and
  - (d) Real Property commonly known as 6299 Germantown Road, Middletown, Ohio, 45042. (Doc. 1).
2. The United States alleged in the Complaint that the Defendants are subject to forfeiture pursuant to 21 U.S.C. §881(a)(6) and (7); 18 U.S.C. §981(a)(1)(A) and (C), and 31 U.S.C. §5317(c)(2) and attached an Affidavit by James Burk, Special Agent for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) setting forth the United States' basis to believe that the Defendants are subject to forfeiture (Doc. 1.)
3. The notice of the Complaint for Forfeiture against Real Property was posted at each of the Defendant Real Property locations on December 15, 2010. (Docs. 6, 7, 8 and 9.)
4. EARL D. CLARK is the titled owner of all the real property Defendants.

5. EARL D. CLARK was served with the Summons & Complaint on December 6, 2010. (Doc. 19)
6. RACHEL CLARK is the spouse of EARL D. CLARK and was served with the Summons & Complaint on December 6, 2010. (Doc. 20.)
7. FIFTH THIRD BANK holds an uncancelled mortgage on Defendant (4), the real property known as 6299 Germantown Road, Middletown, Ohio 45044 to secure a loan to an individual unrelated to this action, and was served with the Summons, Complaint & Notice of Complaint for Forfeiture Against Real Property through its Statutory Agent, James R. Hubbard on December 9, 2010. (Doc. 21).
8. WESBANCO holds a mortgage on Defendant (2), the real property known as 1860 S. University Blvd., Middletown, Ohio 45044 and was served with the Summons, Complaint & Notice of Complaint for Forfeiture Against Real Property through its Statutory Agent, Gregory A. Dugan on December 10, 2010. (Doc.22).
9. Notice of the forfeiture action against the Defendants was posted on an official government internet site ([www.forfeiture.gov](http://www.forfeiture.gov)) beginning on December 17, 2010 in accordance with Rule G(4)(a)(iv)(C) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. (Doc. 23).
10. On December 30, 2010, WESBANCO filed a claim to Defendant (2), real property known as 1860 S. University Blvd., Middletown, Ohio 45044. (Doc. 12.)
11. On March 11, 2011, EARL CLARK filed a claim to all of the Defendant real properties. (Doc. 15.)
12. No other claims were filed.
13. The parties have reached a Global Settlement Agreement wherein the parties agreed as follows:
  - (a) Earl Clark will enter a Plea Agreement and plead guilty to one count of Money Laundering in violation of 18 U.S.C. §1957, one count of Dealing in Explosive Materials Without a License in violation of 18 U.S.C. §842(a)(1) and one count of Filing a False Tax Return in violation of 26 U.S.C. §7206(1).
  - (b) Earl Clark will forfeit all of the assets in the United States v. Acct. Contents of First Financial Acct#\*\*\*\*5403, In the Name of Earl D. Clark, In the Amount of \$353,211.91, et al., Case No. 3:11CV021WHR.
  - (c) The United will dismiss the forfeiture action against the Defendant assets in this civil

case.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Complaint against Defendant (1), having the following legal description, is hereby dismissed:

All right, title and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, to the Real Property commonly known as 6614 Linzie Drive, Franklin, Ohio 45005, having the following legal description:

Situated in the County of Warren in the State of Ohio and further described as follows:

Situate in the State of Ohio, County of Warren, Township of Franklin, and in R. 4 T. 2 Sec. 5, and being lot 13 as known and designated on the plat of Linzie Estates Phase Two as filed at Plat Book 44 Page 81, Warren County Plat Records.

Parcel #07053760250

SAVE AND EXCEPT easements and restrictions of record, zoning ordinances, real estate taxes and assessments, if any prorated to the date of this deed.

Prior instrument reference: Volume 1109 Page 440 of the Official Records of Warren County, Ohio.

2. The Complaint against Defendant (2), having the following legal description, is hereby dismissed:

All right, title and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, to the Real Property commonly known as 1860 South University Boulevard, Middletown, Ohio, 45044 having the following legal description:

**Tract 1**

Situated in the city of Middletown, Butler County, Ohio, and being the northerly part of Lot 14148 as said lot is known and designated on the record plat of Yankee Industrial Park, as recorded in Plat Book 25, page 37 Butler County Plat Records; Said part lot being more specifically described as follows:

Beginning at an iron pin set on the northeasterly corner of said lot 14148, on the westerly right-of -way line of University Boulevard;  
Thence from said point of beginning along the easterly line of said lot and said

westerly right-of-way line south  $32^{\circ} 13' 00''$  east 127.28 feet to an iron pin set; Thence by new division line crossing said lot south  $57^{\circ} 47' 00''$  west 142.13 feet to an iron pin set on the westerly line of said lot;

Thence along the westerly line of said lot north  $37^{\circ} 50' 00''$  west 112.76 feet to an iron pin found on the northwesterly corner of said lot;

Thence on the northerly line of said lot north  $52^{\circ} 10' 00''$  east 153.91 feet to the point of beginning;

Containing 0.4069 acre according to a survey by Charles E. Daley, Professional Ohio Surveyor #6997, dba DALEY Surveying Company, 2130 Middletown-Eaton Road, Middletown, Ohio 45042, in July 1998.

Subject, however, to all rights-of-way, easements and restrictions of record heretofore granted which are applicable to and effective against said lot.

Reference: Plat as recorded in Butler County Engineers Record of Surveys, Volume 35, Plat No. 44.

Parcel ID: Q6542079000015

### **Tract 2**

Situated in the City of Middletown, Butler County, Ohio, and being the southerly part of Lot 14148 as said lot is known and designated on the record plat of Yankee Industrial Park, as recorded in Plat Book 25, page 37 Butler County Plat Records: Said part lot being more specifically described as follows:

Beginning at an iron pin set on the easterly line of said lot 14148, on the westerly right-of-way line of University Boulevard, found by measuring from the northeasterly corner of said lot along the easterly line of said lot and said right-of-way line south  $32^{\circ} 13' 00''$  east 127.28 feet;

Thence from said point of beginning along the easterly line of said lot and said westerly right-of-way line south  $32^{\circ} 13' 00''$  east 86.58;

Thence along a curve to the right an arc distance of 102.42 feet, said curve having a radius of 50.00 feet and a chord which bears south  $26^{\circ} 27' 52''$  west 85.43 feet to the southerly line of said lot and northerly right-of-way line of Industrial Drive;

Thence along the southerly line of said lot and said right-of-way line, along a curve to the right an arc distance of 68.78 feet, said curve having a radius of 793.51 feet and a chord which bears south  $87^{\circ} 37' 43''$  west 68.76 feet to the southwesterly corner of said lot;

Thence along the westerly line of said lot north  $37^{\circ} 50' 00''$  west 97.24 feet to an

iron pin set;

Thence by the new division line crossing said lot north  $57^{\circ} 47' 00''$  east 142.13 feet to the point of beginning;

Containing 0.3828 acre according to a survey by Charles E. Daley, Professional Ohio Surveyor #6997, dba DALEY Surveying Company, 2130 Middletown-Eaton Road, Middletown, Ohio 45042, in July 1998.

Subject, however, to all rights-of-way, easements and restrictions of record heretofore granted which are applicable to and effective against said lot.

Reference: Plat as recorded in Butler County Engineers Record of Surveys, Volume 35, Plat No. 44.

Parcel ID: Q6542079000022

3. The Complaint against Defendant (3), having the following legal description, is hereby dismissed:

All right, title and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, to the Real Property commonly known as 6275 Germantown Road, Middletown, Ohio, 45042, having the following legal description:

Situated in Madison Township, Butler County, Ohio and being part of Section 11, Town 2, Range 4 and more specifically bounded and described as follows:  
Beginning at a point in the Easterly line of aforesaid Section 11, said beginning point bearing South  $0^{\circ} 9'$  West 2975.10 feet from the Northeasterly corner of aforesaid Section 11; Thence from said point of beginning and continuing along the Easterly line of said section South  $0^{\circ} 00'$  West 150.72 feet to the Northeasterly corner of a 2.769 acre tract; Thence with the Northerly line of said tract North  $89^{\circ} 51'$  West 225.69 feet passing a point on the Westerly right of way line of limited access State Route 4 at a distance of 80.00 feet; Thence parallel with the Westerly right of way line of State Route 4 North  $0^{\circ} 9'$  East 5.42 feet to the Southwesterly corner of a 1.038 acre tract, and Thence with the Southerly line of said tract North  $76^{\circ} 29'$  East 232.87 feet (passing a point on the Westerly right of way line of limited access State Route 4 at a distance of 150.00 feet) to the point of beginning, containing 0.638 acres, of which 0.259 acres are located within State Route 4 Highway right of way, according to a survey by Duane, Hosselbring & Kuhlman, Registered Surveyors, Middletown, Ohio January 1969.

Subject however, to all right of ways, easements, restrictions and zoning ordinances of record which are applicable to and effective against said property,

including but not limited to, a certain perennial easement and right of way granted to the State of Ohio for public highway purposes, including loss of direct access to and providing for limited access to the highway improvement as more particularly described in the instrument dated May 28, 1956 and recorded in Volume 607, Page 589 of the Deed Records of Butler County, Ohio.

In addition to the conveyance of the heretofore described real estate the grant hereby conveys to the grantee, its successors and assigns the rights of ingress and egress over and across a 24 foot wide easement which lies west of and adjacent to the Westerly right of way line of State Route 4 and extends from the Southerly line of the herein described tract Southwardly across the frontage of the aforesaid 2.789 acre tract as reserved in Deed dated December 11, 1964, Volume 628, Page 627, Butler County, Ohio, Deed Records.

Furthermore, the herein grantor hereby conveys to the herein grantee, its successors and assigns, the rights of ingress and egress over an easement 60 feet in width which lies South of and adjacent to the Southerly line of the aforesaid 2.789 acre tract and extends from the Westerly right of way line of State Route 4, a distance of 30 feet in depth as measured perpendicular to the aforesaid right of way line; said easement granted for the purposes of ingress and egress to the herein described 0.638 acre tract via the previously described 24 foot wide easement.

Parcel ID: E2210-020-000-029

4. The Complaint against Defendant (4), having the following legal description, is hereby dismissed:

All right, title and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, to the Real Property commonly known as 6299 Germantown Road, Middletown, Ohio, 45042, having the following legal description:

Parcel 1

Situated in Section 11, Town 2, Range 4, Madison Township, Butler County, Ohio, beginning at the point of intersection of the centerline of Trenton-Franklin Road and the westerly right of way line of State Route 4, said point being found by measuring from the Northeast corner of Section 11 and along the East line of said Section South  $0^{\circ} 09'$  West, 2775.10 feet to the centerline of the Trenton-Franklin Road; Thence, along the centerline of said road South  $76^{\circ} 23'$  West, 82.33 feet to the above mentioned point of beginning; Thence from said point of beginning and along the Westerly right of way line of State Route 4, South  $0^{\circ} 11'$  West 200 feet; Thence South  $76^{\circ} 23'$  West, 150 feet; Thence North  $0^{\circ} 11'$  East, 200 feet to the centerline of Trenton-Franklin Road; and Thence, along said centerline North  $76^{\circ} 23'$  East, 150 feet to the point of beginning. Containing 0.669 Acres.

Less and Except:

Situated in Section 11, Town 2, Range 4, Madison Township, Butler County, Ohio, and being a 0.004 acre part of Parcel 1 (0.669 AC) as described in Deed Volume 1433, Page 340, Butler County Deed Records; Said 0.004 acre being more specifically described as follows: Beginning on the Westerly line of said original Parcel No. 1; said point being found by measuring from the Northeasterly corner of Section 11 along the Easterly line of said Section South 0° 09' West 2775.10 feet to the centerline of Trenton-Franklin Road; Thence along said centerline South 76° 23' West 232.33 feet to the Northwesterly corner of said original Parcel; and Thence along the Westerly line of said Parcel South 0° 11' West 107.94 feet to the point of beginning; Thence from said point of beginning by new division lines in said original parcel, along the face of an existing one story, metal clad building, the following courses (1) South 89° 49' East 4.35 feet; (2) South 0° 11' West 40.00 feet; (3) North 89° 49' West 4.35 feet to the Westerly line of said original parcel; and Thence along said Westerly parcel line North 0° 11' East 40.00 feet to the point of beginning. Containing 0.004 Acre (174 SQ. FT.)

Subject to all easements, covenants, conditions, reservations, leases and restrictions of record. All legal highways, all rights of way, all zoning, building and other laws, ordinances and regulations, all rights of tenants in possession, and all real estate taxes and assessments not yet due and payable.

Parcel ID: E2210-020-000-030

5. The United States shall release its Notice of Lis Pendens filed in the County Common Pleas Court with respect to all Defendants.
6. The United States shall release its Affidavit of Facts Relating to Lis Pendens filed in the County Recorder's Office with respect to all Defendants.
7. The parties shall bear their own costs, including any possible attorneys' fees, court costs, or other expenses of litigation.
8. The Court will retain jurisdiction to enforce the terms of this Agreement.
9. This case is terminated on the docket.

SO ORDERED:

September 12, 2012

s/Thomas M. Rose

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THOMAS M. ROSE

UNITED STATES DISTRICT JUDGE

CARTER M. STEWART  
United States Attorney

s/Pamela M. Stanek  
PAMELA M. STANEK (0030155)  
Assistant United States Attorney

s/W. Kelly Johnson by RDG per telephone auth 5/11/2012  
W. KELLY JOHNSON (0037241)  
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s/Earl Clark  
EARL CLARK, Claimant

s/Rachel Clark  
RACHEL CLARK, Potential Claimant

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TODD J. FLAGEL (0066796)  
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